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16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18 SAN JOSE DIVISION

19 UNITED STATES OF AMERICA,) Case No. 18-CR-00258 EJD
20 Plaintiff,)
21 v.) UNITED STATES' PRETRIAL CONFERENCE
22 RAMESH BALWANI,) STATEMENT
23 Defendant.)
24 _____) Date: January 14, 2021
25) Time: 9:00 a.m.
26) Court: Hon. Edward J. Davila
27)
28)

1 Pursuant Criminal Local Rule 17-1-1(b), the parties respectfully submit the following Pretrial
 2 Conference Statement.

3 **1. Disclosure and Contemplated Use of Statements or Reports of Witnesses Under the
 4 Jencks Act, 18 U.S.C. § 3500, or Fed. R. Crim. P. 26.2**

5 The United States has conducted a thorough search for statements subject to the Jencks Act, 18
 6 U.S.C. § 3500, and Federal Rule of Criminal Procedure 26.2 and has produced all such statements
 7 identified to date. The government will continue to produce any Jencks/Rule 26.2 material it obtains,
 8 generates, or subsequently identifies.

9 **2. Disclosure and Contemplated Use of Grand Jury Testimony of Witnesses Intended
 10 to Be Called at the Trial**

11 The United States has produced all Grand Jury testimony of witnesses intended to be called at
 12 the trial.

13 **3. Disclosure of Exculpatory or Other Evidence Favorable to the Defendant on the
 14 Issue of Guilt or Punishment**

15 The United States has conducted a thorough search for information discoverable under *Brady v.*
 16 *Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny and
 17 produced all such information identified to date. The government acknowledges its ongoing obligations
 18 under *Brady*. The government will continue to produce any *Brady* and *Giglio* material it obtains,
 generates, or subsequently identifies.

19 **4. Stipulation of Facts Which May Be Deemed Proved at the Trial Without Further
 20 Proof By Either Party and Limitation of Witnesses**

21 The government intends to propose evidentiary stipulations for Defendant to consider. The
 22 government is seeking stipulations that certain communications or wire transfers were “interstate wire
 23 communications” and that emails bearing certain Bates prefixes produced by Theranos are true and
 24 correct copies of emails sent or received by Theranos personnel. The government anticipates seeking
 25 further stipulations regarding the authenticity of records produced in the underlying investigation. At
 26 this time, the parties have not finalized stipulations to present to the Court. In the event the parties reach
 27 agreement, the stipulations will be reduced to writing, signed by the parties, filed with the Court, and
 28 published to the jury at the appropriate time during the course of the trial.

1 **5. Appointment By the Court of Interpreters Under Fed. R. Crim. P. 28**

2 The government is not aware of any need for interpreters in this case.

3 **6. Dismissal of Counts and Elimination from the Case of Certain Issues, e.g., Insanity,**
4 **Alibi, and Statute of Limitations**

5 Defendant filed or joined six motions to dismiss the Second and Third Superseding Indictments,
6 which were denied on October 13, 2020. ECF No. 552 at 11, 14, 18, 22, 24, 27, 28.

7 **7. Joinder Pursuant to Fed. R. Crim. P. 13 or the Severance of Trial As to Any Co-**
8 **Defendant**

9 On March 20, 2020, the Court ordered severance of the trials of Defendant and Elizabeth
10 Holmes, who is also named in the operative indictment. ECF No. 362.

11 **8. Identification of Informers, Use of Lineup or Other Identification Evidence and**
12 **Evidence of Prior Convictions of Defendant or Any Witness, Etc.**

13 The United States did not use “informers,” as it understands the term, during the criminal
14 investigation of the conduct that gave rise to the Third Superseding Indictment. The United States did
15 not use a “lineup” in the investigation of the conduct that gave rise to the Third Superseding Indictment.
16 The government anticipates numerous witnesses will identify the Defendant and that there will be no
17 meaningful dispute about identification at the trial. The government is unaware of prior convictions of
18 Defendant or witnesses that might serve as a proper basis for impeachment; in the event it learns of any
19 it will make appropriate disclosures.

20 **9. Pretrial Exchange of Lists of Witnesses Intended to Be Called in Person or By**
21 **Deposition to Testify at Trial, Except Those Who May Be Called Only for**
22 **Impeachment or Rebuttal**

23 On November 5, 2021, the United States served a witness list.

24 On November 12, 2021, the Defendant served a witness list.

25 **10. Pretrial Exchange of Documents, Exhibits, Summaries, Schedules, Models or**
26 **Diagrams Intended to Be Offered or Used at Trial, Except Materials That May Be**
27 **Used Only for Impeachment or Rebuttal**

28 On November 21, 2021, the United States served an exhibit list. The government respectfully
reserves the right to amend its list further prior to and during the trial, if necessary. The government will
provide the Court with all pre-marked exhibits as the Court directs and respectfully recommends that the

1 exhibits be provided electronically given the volume. The government also respectfully recommends
 2 exhibits be provided to the Court and the defense in binders relevant to specific witnesses shortly before
 3 each witness's testimony. The United States continues to prepare summaries, diagrams, and
 4 demonstrative exhibits in anticipation of trial, and will share them with defense counsel as they are
 5 completed.

6 **11. Pretrial Resolution of Objections to Exhibits or Testimony to Be Offered at Trial**

7 On May 21 and 22, 2021, the Court issued orders on motions *in limine* in the Holmes matter.
 8 E.g., ECF Nos. 797 & 798. The parties in this matter have filed motions *in limine* which currently are
 9 scheduled for hearing at the pretrial conference on January 14, 2022. The government anticipates
 10 working with defense counsel to resolve further objections to exhibits and testimony before bringing any
 11 matters to the attention of the Court.

12 **12. Preparation of Trial Briefs on Controverted Points of Law Likely to Arise at Trial**

13 Given the Court's familiarity with the case and the legal issues, the government does not plan to
 14 submit a trial brief before the trial starts, unless the Court requests or requires otherwise. To the extent
 15 controverted issues arise during trial, the government reserves the right to present short briefs to aid the
 16 Court's resolution of such issues.

17 **13. Scheduling of the Trial and of Witnesses**

18 The government is considering ways to complete its case-in-chief in less time than the *Holmes*
 19 trial.

20 **14. Request to Submit Questionnaire for Prospective Jurors Pursuant to Crim. L.R.
 21 24-1, Voir Dire Questions, Exercise of Peremptory and Cause Challenges and Jury
 22 Instructions**

23 On December 21, 2021, the government filed its proposed jury instructions and jury verdict
 24 form. ECF Nos. 804, 805, & 802. That same day, Defendant filed his proposed jury instructions. ECF
 25 Nos. 1210. The parties also have submitted proposed juror questionnaires. The government respectfully
 26 requests the opportunity to review and comment on any questionnaire the Court elects to employ, and to
 27 present objections to Defendant's proposed jury instructions.

28 **15. Any Other Matter Which May Tend to Promote a Fair and Expeditious Trial**

The government will work with defense counsel and with witnesses and the Court to ensure the safety of all participants in the trial and compliance with the Court's standing orders regarding health protocols in light of the COVID-19 pandemic. The government also will work with defense counsel to resolve other matters in an effort to promote a fair and expeditious trial and will bring timely to the Court's attention matters on which the parties disagree.

DATED: January 7, 2022

Respectfully submitted,

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/s/
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